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OFFICE OF
INSURANCE COMMISSIONER

In the Matter of)	
)	ORDER NO. D07-101
KAISER PERMANENTE HEALTH)	
ALTERNATIVES and)	CONSENT AND ORDER
KAISER FOUNDATION HEALTH)	LEVYING A FINE
PLAN OF THE NORTHWEST,)	
)	
Authorized Health Care Service)	
Contractors)	

FINDINGS OF FACT

1. Kaiser Permanente Health Alternatives ("KPHA") is authorized to conduct business in the state of Washington as a Health Care Service Contractor ("HCSC").

2. Kaiser Foundation Health Plan of the Northwest ("KFHPNW") is authorized to do business in the state of Washington as a HCSC.

3. KPHA and KFHPNW are referred to collectively herein as "Kaiser" or "the Kaiser licensees".

4. In 2006, Kaiser attempted to file endorsements for changes to the KPHA and KFHPNW plans for the 2006 new plan year. These changes included: reduction of out-of-pocket expense limits, increases to lifetime benefit maximums, removal of some benefits from the deductible, increases in benefit limits for chemical dependency, changes to comply with HIPAA, etc. Because these products are "file and use" under RCW 48.44.040, the companies began making these changes to many groups' plans as they were renewed.

5. Under RCW 48.43.035(2), all such health plans must contain or incorporate by endorsement a guarantee of the continuity of coverage of the plans. As a result, carriers may not make any substantial changes to the plans for those groups. Regulatory amendments such as the changes to comply with HIPAA are allowed. However, enhancements to benefits are not.

6. Under subsection (4) of the "guaranteed renewal" statute, a carrier is allowed to cancel or nonrenew a health plan for certain reasons, including when the carrier "replaces a product and the replacement product is provided to all covered persons within that class or line of business, includes all of the services covered under the replaced product, and does not significantly limit access to the kind of services covered

under the replaced product. The health plan may also allow unrestricted conversion to a fully comparable product.” RCW 48.43.035(4)(b). In this situation, however, the carrier must provide notice to each group of the discontinuation of its existing plan at least ninety days prior to the date of the discontinuation; offer each small group that has the discontinued coverage the option to enroll in any other small employer group plan currently being offered by the carrier in the market; and act uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for the coverage. RCW 48.43.035(4)(c).

7. Kaiser did not provide notice of their plans’ replacement to its enrollees or offer the enrollees the option to enroll in another small employer group plan.

8. At OIC’s direction, Kaiser withdrew the 2006 endorsements and re-filed the new products in their entirety with new form numbers. OIC also required Kaiser to send replacement letters (90-day notices) to each small group that had not yet been renewed as well as file the materials that other small groups had already received.

9. 38 small groups were affected by the changes to the KPHA plans. 3267 small groups were affected by the changes to the KFHPNW plans. There were thus a total of 3,305 affected groups.

CONCLUSIONS OF LAW

1. The enhancements to benefits in Kaiser’s plans constituted replacement of all of its guaranteed-renewable small group products. No notice of the replacement was provided to Kaiser’s members nor were they offered the opportunity to enroll in another plan.

2. By replacing all of its small group plans, Kaiser violated RCW 48.43.035 (2), which requires all health plans to contain or incorporate by endorsement a guarantee of the continuity of coverage of the plans.

3. By replacing all of its small group plans without notice to each group or the option to enroll in another plan, Kaiser violated RCW 48.43.035(4)(b).

4. A fine for these violations is authorized under RCW 48.44.166 in an amount not less than two hundred fifty dollars or more than ten thousand dollars.

CONSENT TO ORDER

NOW, THEREFORE, KPHA and KFHPNW each consent to the following in consideration of their desire to resolve this matter without further administrative or judicial proceedings, and the Insurance Commissioner consents to settle the matter in consideration of the companies’ payment of a fine on such terms and conditions as are set forth below:

1. KPHA and KFHPNW consent to the foregoing Findings of Fact and Conclusions of Law as they pertain to these facts, consent to the entry of the Order and waive further administrative or judicial challenge to the OIC’s actions related to the subject matter of the Order;

2. The OIC will impose a fine of Seventy-Five Thousand Dollars (\$75,000), and suspend Forty-Five Thousand Dollars (\$45,000) of that, on the conditions that:

a. Within thirty days of the entry of this Order, KPHA and KFHPNW jointly pay Thirty Thousand Dollars (\$30,000);

b. KPHA and KFHPNW commit no further violations of the statutes and regulations that are the subject of this order for a period of two years from the time this order is entered. The OIC will not impose the balance of this fine nor take action against the Certificate of Authority of either KPHA or KFHPNW should either company commit isolated, de minimis violations of the statutes and regulations that are the subject of this order during the suspense period, as determined by the OIC. KPHA and KFHPNW commit to rectifying such violations promptly once they are discovered;

c. The Companies understand and agree that any future failure to comply with the statutes and regulations which are the subject of this Order constitutes grounds for further penalties which may be imposed in direct response to that further violation, in addition to the imposition of the suspended portion of the fine;

d. The suspended portion of this fine will be imposed at the sole discretion of the Insurance Commissioner according to the conditions set forth above, without any right to advance notice, hearing, or appeal; and

3. Failure to pay the fine set forth in paragraph two shall constitute grounds for the revocation of KPHA and/or KFHPNW's Certificates of Authority.

EXECUTED this 27th day of March, 2007.

KAISER PERMANENTE HEALTH
ALTERNATIVES

By: Andrew Munn

Title: Regional President

KAISER FOUNDATION HEALTH
PLAN OF THE NORTHWEST

By: Andrew Munn

Title: Regional President

ORDER OF THE INSURANCE COMMISSIONER

NOW, THEREFORE, pursuant to the foregoing Findings of Fact, Conclusions of Law, and Consent to Order, the Insurance Commissioner hereby orders as follows:

1. Kaiser Permanente Health Alternatives agrees to pay a fine in the amount of Seventy-Five Thousand Dollars (\$75,000), of which Forty-Five Thousand Dollars (\$45,000) is suspended on the conditions set forth and agreed to above.
2. Thirty Thousand Dollars (\$30,000) must be paid in full within thirty days of the date of entry of this order.

3. Failure to pay this fine and to adhere to the conditions shall constitute grounds for revocation of KPHA and/or KFHPNW's Certificate of Authority, and in the recovery of the fine through a civil action brought on behalf of the commissioner by the attorney general.

EXECUTED this 10th day of April, 2007.

Mike Kreidler
Washington State Insurance Commissioner

By: Andrea L. Philhower
Andrea L. Philhower
Staff Attorney, Legal Affairs Division